



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Brad Woodhouse
American Democracy Legal Fund
455 Massachusetts Avenue, N.W.
Washington, DC 20001

MAY 04 2016

RE: MUR 6939
Mike Huckabee, *et al.*

Dear Mr. Woodhouse:

This is in reference to the complaint you filed with the Federal Election Commission on May 19, 2015, concerning Mike Huckabee. After considering the circumstances of this matter on April 26, 2016, the Commission determined to dismiss this matter as to Mike Huckabee. The Commission also found that on the basis of the information provided in your complaint, and information provided by respondents, there is no reason to believe Pursuing America's Greatness and Bryan Jeffrey in his official capacity as treasurer violated the Federal Election Campaign Act of 1971, as amended ("the Act").

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

MUR 6939 (Mike Huckabee)
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If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Daniel A. Petalas
Acting General Counsel



BY: Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

In the Matter of)
)
Mike Huckabee) MUR 6939
)
Pursuing America's Greatness and)
Bryan Jeffrey in his official capacity as treasurer)

I. INTRODUCTION

This matter involves an allegation that former Arkansas Governor Mike Huckabee solicited excessive contributions for an independent-expenditure-only committee when, during the announcement of his candidacy for the 2016 Republican presidential nomination, he stated, "[i]f you want to give a million dollars, please do it." Huckabee asserts that his statement was a joke, not an actual solicitation of a million-dollar contribution. Although Huckabee's remarks literally called for a listener to make a contribution in an amount outside of the limits of the Federal Election Campaign Act of 1971, as amended ("the Act"), taken in context, we conclude that Huckabee made his remark in jest and that an objectively reasonable observer would have understood as much. Therefore, the Commission dismisses the allegations that Mike Huckabee violated 52 U.S.C. § 30125(e)(1)(A) or 11 C.F.R. § 300.61.¹ Further, the Commission finds no reason to believe that Pursuing America's Greatness violated the Act in connection with the challenged statement.

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended, was transferred from Title 2 to new Title 52 of the United States Code.

II. FACTS

On May 5, 2015, Huckabee announced his candidacy for President in the 2016 election in a speech in his hometown of Hope, Arkansas.² During that speech, Huckabee stated:

I'm going to let you in on a little secret: I never have been, and I'm not going to be the favorite candidate of those in the Washington-to-Wall Street corridor of power. [Applause]

I will be funded and fueled not by the billionaires, but by working people across America who will find out that \$15 and \$25 a month contributions can take us from Hope to higher ground. [Applause]

Now, rest assured, if you want to give a million dollars, please do it. [Laughter]. But I know most of you can't. I'm just going to ask you to give something in the name of your children and grandchildren.³

After making the announcement, Huckabee timely registered his presidential campaign committee, Huckabee for President, Inc.⁴

Pursuing America's Greatness ("PAG") registered with the Commission as an independent-expenditure-only political committee ("IEOPC")⁵ on March 11, 2015.⁶ The

² See, e.g., Trip Gabriel, *Mike Huckabee Joins Republican Presidential Race*, The New York Times, May 5, 2015, http://www.nytimes.com/2015/05/06/us/politics/mike-huckabee-running-in-republican-presidential-primary.html?_r=0.

³ Respondents submitted a video of this portion of Huckabee's speech.

⁴ FEC Form 1, Statement of Organization (May 8, 2015).

⁵ IEOPCs, such as PAG, may solicit and accept unlimited contributions, but may not make any contributions. See Advisory Op. 2010-11 (Commonsense Ten) at 3; Advisory Op. 2011-11 at 4-5 (Colbert for President Inc.)

⁶ FEC Form 1, Statement of Organization (March 11, 2015). PAG's treasurer, Bryan Jeffrey, is also the treasurer of Huckabee's leadership PAC, HUCK PAC, and is now also the treasurer of Huckabee for President Inc.

press reported that PAG was formed by Huckabee supporters to assist his anticipated 2016 presidential campaign.⁷ Huckabee did not mention PAG during his speech.

Complainant alleges that Huckabee's statement was a solicitation of a million-dollar contribution. Further, Complainant alleges that while Huckabee's own campaign could not accept a million-dollar contribution, the solicitation actually was for PAG, an entity which could accept unlimited contributions.⁸ Complainant alleges that Huckabee knew about PAG and its ability to accept unlimited contributions because his campaign committee, his leadership PAC, and PAG all had the same treasurer, and that Huckabee's audience would have understood his statement as a clear reference to PAG.⁹

Complainant alleges that the Commission's regulations provide that a statement need not be explicit to be a solicitation.¹⁰

Huckabee asserts that his statement was a joke and not a solicitation under the Act or the Commission's regulations.¹¹ He notes that he was speaking to longtime friends and supporters in his hometown.¹² Huckabee further maintains that his audience

⁷ See, e.g., Maggie Haberman, *Iowa Operative Will Run Mike Huckabee Super PAC*, The New York Times, Apr. 2, 2015, <http://www.nytimes.com/politics/first-draft/2015/04/02/iowa-operative-will-run-mike-huckabee-super-pac/>; Serafin Gomez, *Huckabee supporters launch super PAC*, FoxNews.com, Apr. 2, 2015, <http://www.foxnews.com/politics/2015/04/02/huckabee-supporters-launch-super-pac/>.

⁸ Compl. at 3-4.

⁹ Compl. at 1-2.

¹⁰ Compl. at 3, citing to 11 C.F.R. § 300.2(m)(2).

¹¹ Huckabee Resp. at 2.

¹² *Id.* at 1-2. Huckabee described Hope, Arkansas, as a small rural town with a median household income of roughly \$25,000.

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recognized his comment as a joke and immediately laughed, since many of them could likely not afford to give the permissible \$2,700 maximum contribution.¹³

Huckabee argues that an alleged solicitation must be considered in the context that it was made and that the Commission specifically advised that jokes and statements made in parody may not constitute a solicitation.¹⁴ Huckabee argues that no objective observer would have reasonably considered his statement an actual solicitation for million-dollar contributions, and that the laughter from the audience shows that they understood his comment to be a joke.¹⁵

Finally, Huckabee argues that Complainants' allegation that the comment was a solicitation for contributions to PAG is baseless because Huckabee did not directly or indirectly refer to or mention PAG during his announcement and Complainant has not provided any information showing that he did.¹⁶ PAG asserts that neither it, nor any of its representatives, including its treasurer Jeffrey, had any involvement in Huckabee's campaign announcement.¹⁷

III. ANALYSIS

The Act and the Commission's regulations prohibit federal candidates and their agents from soliciting funds that do not comply with the Act's prohibitions, limitations,

¹³ Huckabee Resp. at 2.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ *Id.* at 3.

¹⁷ PAG Resp. PAG claims that Jeffrey does not serve as a political strategist or political consultant to either PAG or HUCK PAC. *Id.*

The remaining question is whether Huckabee was actually soliciting million-dollar contributions to his own campaign. The Commission's regulations define "solicit" broadly as "to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value."¹⁹ The regulation states that the communication should be "construed as reasonably understood in the context in which it is made...."²⁰ This test is objective and does not turn on the subjective interpretations of the speaker or the recipients.²¹ The speaker's conduct may also be relevant to the meaning of a statement.²² The

¹⁹ 11 C.F.R. § 300.2(m).

20 *Id.*

²¹ 300.2(m), *see also* Definitions of “Solicit” and “Direct”; Final Rule; 71 Fed. Reg. 13926-02, 13928 (March 20, 2006).

22 *Id.*

Commission explained that its objective standard “hinges on whether the recipient should have reasonably understood that a solicitation was made.”²³

The Commission further explained that “words that would by their plain meaning normally be understood as a solicitation, may not be a solicitation when considered in context, such as when the words are used as part of a joke or parody.”²⁴

Given the record here, we conclude that an objective listener would not reasonably have understood that Huckabee in fact solicited million-dollar contributions. Rather, he appeared to be making a humorous aside in the course of his speech.²⁵ Immediately before saying “if you want to give a million dollars, please do it,” Huckabee stated that his campaign would not be funded by “Wall Street” or “billionaires” but would instead be funded by working people. Huckabee expressly dismissed the idea that members of his audience would provide large contributions and instead encouraged his listeners to consider contributing \$15 or \$25 a month. Huckabee then visibly altered his facial expression and tone and added that, “[i]f you want to give a million dollars, please do it.” Indeed, while making the aside, his demeanor changed in a way that further would have reasonably evidenced to his audience that his remarks were not serious or intended to be taken literally — he closes his eyes, pauses, shrugs, and smiles — and many in the audience laughed.

²³ 71 Fed. Reg. 13929.

²⁴ *Id.* (citing *Phantom Touring, Inc. v. Affiliated Publications*, 953 F.2d 724, 727 (1st Cir. 1992) (concluding that no reasonable listener would understand that a theater critic who wrote “[t]he producer who decided to charge admission for that show is committing highway robbery” was accusing the producer of the actual crime of robbery).

²⁵ *Id.*

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Consequently, given the context in which Huckabee made his statement, a reasonable person would have believed that Huckabee was not in earnest when he stated that “[i]f you want to give a million dollars, please do it.” Therefore, the Commission dismisses the allegation that Mike Huckabee violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 300.61. Further, the Commission finds no reason to believe that Pursuing America’s Greatness and Bryan Jeffrey in his official capacity as treasurer violated the Act.